

# Process to Incorporate a City

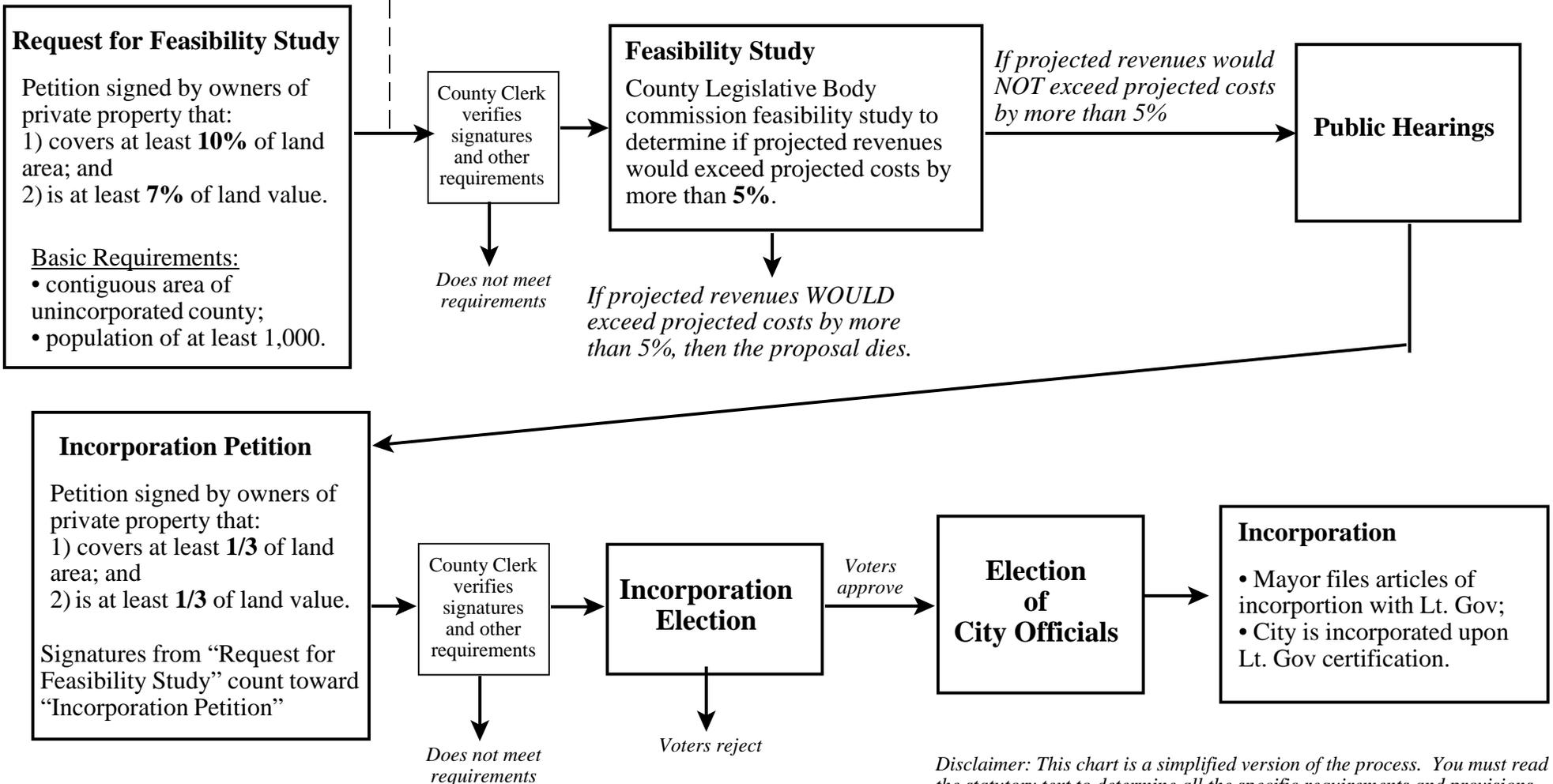
## Large Property Owners May Opt Out

Large property owners may opt out if property:

- is more than 1% of total assessed value;
- is currently nonurban;
- will not need municipal-type services; and
- exclusion will not leave an unincorporated island.

(Applies only to first and second class counties)

Start Here



*Disclaimer: This chart is a simplified version of the process. You must read the statutory text to determine all the specific requirements and provisions. Most of the provisions are found in Title 10, Chapter 2, Part 1, Incorporation, Utah Code Annotated.*

# Incorporation of Municipalities

## Title 10, Chapter 2, Part 1

(Note: Text is current through the 2007 General Session)

### Part 1 - Incorporation

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#### 10-2-101. **Definitions.**

(1) As used in this part:

- (a) "Commission" means a boundary commission established under Section 10-2-409

for the county in which the property that is proposed to be incorporated is located.

- (b) "Feasibility consultant" means a person or firm with expertise in the processes and economics of local government.
  - (c) "Private," with respect to real property, means not owned by the United States or any agency of the federal government, the state, a county, a municipality, a school district, a local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, a special service district under Title 17A, Chapter 2, Part 13, Utah Special Service District Act, or any other political subdivision or governmental entity of the state.
- (2) For purposes of this part:
- (a) the owner of real property shall be the record title owner according to the records of the county recorder on the date of the filing of the request or petition; and
  - (b) the value of private real property shall be determined according to the last assessment roll for county taxes before the filing of the request or petition.
- (3) For purposes of each provision of this part that requires the owners of private real property covering a percentage or fraction of the total private land area within an area to sign a request or petition:
- (a) a parcel of real property may not be included in the calculation of the required percentage or fraction unless the request or petition is signed by:
    - (i) except as provided in Subsection (3)(a)(ii), owners representing a majority ownership interest in that parcel; or
    - (ii) if the parcel is owned by joint tenants or tenants by the entirety, 50% of the number of owners of that parcel;
  - (b) the signature of a person signing a request or petition in a representative capacity on behalf of an owner is invalid unless:
    - (i) the person's representative capacity and the name of the owner the person represents are indicated on the request or petition with the person's signature; and
    - (ii) the person provides documentation accompanying the request or petition that substantiates the person's representative capacity; and
  - (c) subject to Subsection (3)(b), a duly appointed personal representative may sign a request or petition on behalf of a deceased owner.

**10-2-102. Incorporation of a contiguous area.**

- (1) A contiguous area of a county not within a municipality may incorporate as a municipality as provided in this part.
- (2) Incorporation as a city is governed by Sections 10-2-103 through 10-2-124.

Incorporation as a town is governed by Section 10-2-125.

**10-2-103. Request for feasibility study -- Requirements -- Limitations.**

- (1) The process to incorporate a contiguous area of a county as a city is initiated by a request for a feasibility study filed with the clerk of the county in which the area is located.
- (2) Each request under Subsection (1) shall:
  - (a) be signed by the owners of private real property that:
    - (i) is located within the area proposed to be incorporated;
    - (ii) covers at least 10% of the total private land area within the area; and
    - (iii) is equal in value to at least 7% of the value of all private real property within the area;
  - (b) indicate the typed or printed name and current residence address of each owner signing the request;
  - (c) describe the contiguous area proposed to be incorporated as a city;
  - (d) designate up to five signers of the request as sponsors, one of whom shall be designated as the contact sponsor, with the mailing address and telephone number of each;
  - (e) be accompanied by and circulated with an accurate map or plat, prepared by a licensed surveyor, showing the boundaries of the proposed city; and
  - (f) request the county legislative body to commission a study to determine the feasibility of incorporating the area as a city.
- (3) A request for a feasibility study under this section may not propose for incorporation an area that includes some or all of an area that is the subject of a completed feasibility study or supplemental feasibility study whose results comply with Subsection 10-2-109(3) unless:
  - (a) the proposed incorporation that is the subject of the completed feasibility study or supplemental feasibility study has been defeated by the voters at an election under Section 10-2-111; or
  - (b) the time provided under Subsection 10-2-109(1) for filing an incorporation petition based on the completed feasibility study or supplemental feasibility study has elapsed without the filing of a petition.
- (4) (a) Except as provided in Subsection (4)(b), a request under this section may not propose for incorporation an area that includes some or all of an area proposed for annexation in an annexation petition under Section 10-2-403 that:
  - (i) was filed before the filing of the request; and
  - (ii) is still pending on the date the request is filed.

- (b) Notwithstanding Subsection (4)(a), a request may propose for incorporation an area that includes some or all of an area proposed for annexation in an annexation petition described in Subsection (4)(a) if:
    - (i) the proposed annexation area that is part of the area proposed for incorporation does not exceed 20% of the area proposed for incorporation;
    - (ii) the request complies with Subsections (2) and (3) with respect to the area proposed for incorporation excluding the proposed annexation area; and
    - (iii) excluding the area proposed for annexation from the area proposed for incorporation would not cause the area proposed for incorporation to lose its contiguousness.
  - (c) Except as provided in Section 10-2-107, each request to which Subsection (4)(b) applies shall be considered as not proposing the incorporation of the area proposed for annexation.
- (5) At the time of filing the request for a feasibility study with the county clerk, the sponsors of the request shall mail or deliver a copy of the request to the chair of the planning commission of each township in which any part of the area proposed for incorporation is located.

**10-2-104. Notice to owner of more than 1% of property -- Exclusion of property from proposed boundaries.**

- (1) Within seven calendar days of the date on which a request under Section 10-2-103 is filed, the county clerk shall notify of the proposed incorporation each owner of real property owning more than 1% of the assessed value of all property in the proposed incorporation boundaries.
- (2) (a) A property owner within the boundaries of a proposed municipality, owning more than 1% of the assessed value of all property in the proposed incorporation boundaries, may exclude all or part of the property owner's property from the proposed boundaries by filing a Notice of Exclusion within ten calendar days of receiving the clerk's notice under Subsection (1).
- (b) The county legislative body shall exclude the property identified in the Notice of Exclusion from the proposed boundaries only if the property:
  - (i) is currently nonurban;
  - (ii) does not or will not require municipal provision of municipal-type services including:
    - (A) culinary or irrigation water;
    - (B) sewage collection or treatment;
    - (C) storm drainage or flood control;

- (D) recreational facilities or parks;
  - (E) electric generation or transportation;
  - (F) construction or maintenance of local streets and roads;
  - (G) curb and gutter or sidewalk maintenance;
  - (H) garbage and refuse collection; and
  - (I) street lighting; and
- (iii) exclusion will not leave an unincorporated island within the proposed municipality.
- (3) This section applies only to counties of the first or second class.
- (4) If the county legislative body excludes property from the proposed boundaries under Subsection (2)(b), the county legislative body shall, within five days of the exclusion, send written notice of its action to the contact sponsor.

**10-2-105. Processing a request for feasibility study -- Certification or rejection by county clerk -- Processing priority -- Limitations -- Township planning commission recommendation.**

- (1) Within 45 days of the filing of a request under Section 10-2-103, the county clerk shall:
- (a) with the assistance of other county officers from whom the clerk requests assistance, determine whether the request complies with Section 10-2-103; and
  - (b) (i) if the clerk determines that the request complies with Section 10-2-103:
    - (A) certify the request and deliver the certified request to the county legislative body; and
    - (B) mail or deliver written notification of the certification to:
      - (I) the contact sponsor; and
      - (II) the chair of the planning commission of each township in which any part of the area proposed for incorporation is located; or
    - (ii) if the clerk determines that the request fails to comply with any of those requirements, reject the request and notify the contact sponsor in writing of the rejection and the reasons for the rejection.
- (2) The county clerk shall certify or reject requests under Subsection (1) in the order in which they are filed.
- (3) (a) (i) If the county clerk rejects a request under Subsection (1)(b)(ii), the request may be amended to correct the deficiencies for which it was rejected and then refiled with the county clerk.
- (ii) A signature on a request under Section 10-2-103 may be used toward fulfilling the signature requirement of Subsection 10-2-103(2)(a) for the request as modified under Subsection (3)(a)(i).

- (b) If a request is amended and refiled under Subsection (3)(a) after having been rejected by the county clerk under Subsection (1)(b)(ii), it shall be considered as a newly filed request, and its processing priority is determined by the date on which it is refiled.
- (4) (a) A township planning commission may recommend to the legislative body of the county in which the township is located that, for purposes of Subsection 10-2-106(4)(a)(xiii), the county legislative body support or oppose a proposed incorporation under this part of an area located within the township.
- (b) (i) Except as provided in Subsection (4)(b)(ii), the township planning commission shall communicate each recommendation under Subsection (4)(a) in writing to the county legislative body within 60 days of the county clerk's certification under Subsection (1)(b)(i).
  - (ii) Notwithstanding Subsection (4)(b)(i), if the county clerk's certification under Subsection (1)(b)(i) is before July 17, 1997, the township planning commission shall communicate its recommendation under Subsection (4)(a) in writing to the county legislative body within 60 days of the county clerk's certification under Subsection (1)(b)(i) or August 31, 1997, whichever is later, but no later than:
    - (A) 75 days after the county legislative body has engaged the feasibility consultant under Subsection 10-2-106(1); or
    - (B) the completion of the feasibility study.
  - (iii) At the time the recommendation under Subsection (4)(b)(i) is delivered to the county legislative body, the township planning commission shall mail or deliver a copy of the recommendation to the contact sponsor.

**10-2-106. Feasibility study -- Feasibility study consultant.**

- (1) Within 60 days of receipt of a certified request under Subsection 10-2-105(1)(b)(i), the county legislative body shall engage the feasibility consultant chosen under Subsection (2) to conduct a feasibility study.
- (2) The feasibility consultant shall be chosen by a majority vote of a selection committee consisting of:
  - (a) a person designated by the county legislative body;
  - (b) a person designated by the sponsors of the request for a feasibility study; and
  - (c) a person designated by the governor.
- (3) The county legislative body shall require the feasibility consultant to:
  - (a) complete the feasibility study and submit the written results to the county legislative body and the contact sponsor no later than 90 days after the feasibility

- consultant is engaged to conduct the study;
- (b) submit with the full written results of the feasibility study a summary of the results no longer than one page in length; and
  - (c) attend the public hearings under Subsection 10-2-108(1) and present the feasibility study results and respond to questions from the public at those hearings.
- (4) (a) The feasibility study shall consider:
- (i) the population and population density within the area proposed for incorporation and the surrounding area;
  - (ii) the history, geography, geology, and topography of and natural boundaries within the area proposed to be incorporated and the surrounding area;
  - (iii) whether the proposed boundaries eliminate or create an unincorporated island or peninsula;
  - (iv) whether the proposed incorporation will hinder or prevent a future and more logical and beneficial incorporation or a future logical and beneficial annexation;
  - (v) the fiscal impact on unincorporated areas, other municipalities, local districts, special service districts, and other governmental entities in the county;
  - (vi) current and five-year projections of demographics and economic base in the proposed city and surrounding area, including household size and income, commercial and industrial development, and public facilities;
  - (vii) projected growth in the proposed city and in adjacent areas during the next five years;
  - (viii) subject to Subsection (4)(c), the present and five-year projections of the cost, including overhead, of governmental services in the proposed city;
  - (ix) the present and five-year projected revenue for the proposed city;
  - (x) the projected impact the incorporation will have over the following five years on the amount of taxes that property owners within the proposed city and in the remaining unincorporated county will pay;
  - (xi) past expansion in terms of population and construction in the proposed city and the surrounding area;
  - (xii) the extension of the boundaries of other nearby municipalities during the past ten years, the willingness of those municipalities to annex the area proposed for incorporation, and the probability that those municipalities would annex territory within the area proposed for incorporation within the next five years except for the incorporation; and
  - (xiii) whether the legislative body of the county in which the area proposed to be incorporated favors the incorporation proposal.

- (b) For purposes of Subsection (4)(a)(ix), the feasibility consultant shall assume ad valorem property tax rates on residential property within the proposed city at the same level at which they would have been without the incorporation.
- (c) For purposes of Subsection (4)(a)(viii):
  - (i) the feasibility consultant shall assume a level and quality of governmental services to be provided to the proposed city in the future that fairly and reasonably approximate the level and quality of governmental services being provided to the proposed city at the time of the feasibility study;
  - (ii) in determining the present cost of a governmental service, the feasibility consultant shall consider:
    - (A) the amount it would cost the proposed city itself to provide the service after incorporation;
    - (B) if the county is currently providing the service to the proposed city, the county's cost of providing the service; and
    - (C) if the county is not currently providing the service to the proposed city, the amount the proposed city can reasonably expect to pay for the service under a contract for the service; and
  - (iii) the five-year projected cost of a governmental service shall be based on the amount calculated under Subsection (4)(c)(ii), taking into account inflation and anticipated growth.
- (5) If the results of the feasibility study or revised feasibility study do not meet the requirements of Subsection 10-2-109(3), the feasibility consultant shall, as part of the feasibility study or revised feasibility study and if requested by the sponsors of the request, make recommendations as to how the boundaries of the proposed city may be altered so that the requirements of Subsection 10-2-109(3) may be met.
- (6) (a) For purposes of this Subsection (6), "pending" means that the process to incorporate an unincorporated area has been initiated by the filing of a request for feasibility study under Section 10-2-103 but that, as of the date this Subsection (6) becomes effective, a petition under Section 10-2-109 has not yet been filed.
- (b) The amendments to Subsection (4) that become effective upon the effective date of this Subsection (6):
  - (i) apply to each pending proceeding proposing the incorporation of an unincorporated area; and
  - (ii) do not apply to a municipal incorporation proceeding under this part in which a petition under Section 10-2-109 has been filed.
- (c) (i) If, in a pending incorporation proceeding, the feasibility consultant has, as of the effective date of this Subsection (6), already completed the feasibility

study, the county legislative body shall, within 20 days after the effective date of this Subsection (6) and except as provided in Subsection (6)(c)(iii), engage the feasibility consultant to revise the feasibility study to take into account the amendments to Subsection (4) that became effective on the effective date of this Subsection (6).

- (ii) Except as provided in Subsection (6)(c)(iii), the county legislative body shall require the feasibility consultant to complete the revised feasibility study under Subsection (6)(c)(i) within 20 days after being engaged to do so.
  - (iii) Notwithstanding Subsections (6)(c)(i) and (ii), a county legislative body is not required to engage the feasibility consultant to revise the feasibility study if, within 15 days after the effective date of this Subsection (6), the request sponsors file with the county clerk a written withdrawal of the request signed by all the request sponsors.
- (d) All provisions of this part that set forth the incorporation process following the completion of a feasibility study shall apply with equal force following the completion of a revised feasibility study under this Subsection (6), except that, if a petition under Section 10-2-109 has already been filed based on the feasibility study that is revised under this Subsection (6):
- (i) the notice required by Section 10-2-108 for the revised feasibility study shall include a statement informing signers of the petition of their right to withdraw their signatures from the petition and of the process and deadline for withdrawing a signature from the petition;
  - (ii) a signer of the petition may withdraw the signer's signature by filing with the county clerk a written withdrawal within 30 days after the final notice under Subsection 10-2-108(2) has been given with respect to the revised feasibility study; and
  - (iii) unless withdrawn, a signature on the petition may be used toward fulfilling the signature requirements under Subsection 10-2-109(2)(a) for a petition based on the revised feasibility study.

**10-2-107. Modified request for feasibility study -- Supplemental feasibility study.**

- (1) (a) (i) The sponsors of a request may modify the request to alter the boundaries of the proposed city and then refile the request, as modified, with the county clerk if:
  - (A) the results of the feasibility study do not meet the requirements of Subsection 10-2-109(3); or
  - (B) (I) the request meets the conditions of Subsection 10-2-103(4)(b);

- (II) the annexation petition that proposed the annexation of an area that is part of the area proposed for incorporation has been denied; and
      - (III) an incorporation petition based on the request has not been filed.
    - (ii) (A) A modified request under Subsection (1)(a)(i)(A) may not be filed more than 90 days after the feasibility consultant's submission of the results of the study.
    - (B) A modified request under Subsection (1)(a)(i)(B) may not be filed more than 18 months after the filing of the original request under Section 10-2-103.
  - (b) (i) Subject to Subsection (1)(b)(ii), each modified request under Subsection (1)(a) shall comply with the requirements of Subsections 10-2-103(2), (3), (4), and (5).
  - (ii) Notwithstanding Subsection (1)(b)(i), a signature on a request filed under Section 10-2-103 may be used toward fulfilling the signature requirement of Subsection 10-2-103(2)(a) for the request as modified under Subsection (1)(a), unless the modified request proposes the incorporation of an area that is more than 20% greater or smaller than the area described by the original request in terms of:
    - (A) private land area; or
    - (B) value of private real property.
- (2) Within 20 days after the county clerk's receipt of the modified request, the county clerk shall follow the same procedure for the modified request as provided under Subsection 10-2-105(1) for an original request.
  - (3) The timely filing of a modified request under Subsection (1) gives the modified request the same processing priority under Subsection 10-2-105(2) as the original request.
  - (4) Within ten days after the county legislative body's receipt of a certified modified request under Subsection (1)(a)(i)(A) or a certified modified request under Subsection (1)(a)(i)(B) that was filed after the completion of a feasibility study on the original request, the county legislative body shall commission the feasibility consultant who conducted the feasibility study to supplement the feasibility study to take into account the information in the modified request that was not included in the original request.
  - (5) The county legislative body shall require the feasibility consultant to complete the supplemental feasibility study and to submit written results of the supplemental study to the county legislative body and to the contact sponsor no later than 30 days after the feasibility consultant is commissioned to conduct the supplemental feasibility study.
  - (6) (a) Subject to Subsection (6)(b), if the results of the supplemental feasibility study do

not meet the requirements of Subsection 10-2-109(3):

- (i) the sponsors may file a further modified request as provided in Subsection (1); and
  - (ii) Subsections (2), (4), and (5) apply to a further modified request under Subsection (6)(a)(i).
- (b) A further modified request under Subsection (6)(a) shall, for purposes of its processing priority, be considered as an original request for a feasibility study under Section 10-2-103.

**10-2-108. Public hearings on feasibility study results -- Notice of hearings.**

- (1) If the results of the feasibility study or supplemental feasibility study meet the requirements of Subsection 10-2-109(3), the county legislative body shall, at its next regular meeting after receipt of the results of the feasibility study or supplemental feasibility study, schedule at least two public hearings to be held:
- (a) within the following 60 days;
  - (b) at least seven days apart;
  - (c) in geographically diverse locations within the proposed city; and
  - (d) for the purpose of allowing:
    - (i) the feasibility consultant to present the results of the study; and
    - (ii) the public to become informed about the feasibility study results and to ask questions about those results of the feasibility consultant.
- (2) (a) (i) The county clerk shall publish notice of the public hearings required under Subsection (1) at least once a week for three successive weeks in a newspaper of general circulation within the proposed city.
- (ii) The last publication of notice required under Subsection (2)(a)(i) shall be at least three days before the first public hearing required under Subsection (1).
- (b) (i) If there is no newspaper of general circulation within the proposed city, the county clerk shall post at least one notice of the hearings per 1,000 population in conspicuous places within the proposed city that are most likely to give notice of the hearings to the residents of the proposed city.
- (ii) The clerk shall post the notices under Subsection (2)(b)(i) at least seven days before the first hearing under Subsection (1).
- (c) The notice under Subsections (2)(a) and (b) shall include the feasibility study summary under Subsection 10-2-106(3)(b) and shall indicate that a full copy of the study is available for inspection and copying at the office of the county clerk.

**10-2-109. Incorporation petition -- Requirements and form.**

- (1) At any time within 18 months of the completion of the public hearings required under Subsection 10-2-108(1), a petition for incorporation of the area proposed to be incorporated as a city may be filed in the office of the clerk of the county in which the area is located.
- (2) Each petition under Subsection (1) shall:
  - (a) be signed by the owners of private real property that:
    - (i) is located within the area proposed to be incorporated;
    - (ii) covers at least 1/3 of the total private land area within the area; and
    - (iii) is equal in value to at least 1/3 of the value of all private real property within the area;
  - (b) indicate the typed or printed name and current residence address of each owner signing the petition;
  - (c) describe the area proposed to be incorporated as a city, as described in the feasibility study request or modified request that meets the requirements of Subsection (3);
  - (d) state the proposed name for the proposed city;
  - (e) designate five signers of the petition as petition sponsors, one of whom shall be designated as the contact sponsor, with the mailing address and telephone number of each;
  - (f) state that the signers of the petition appoint the sponsors, if the incorporation measure passes, to represent the signers in the process of:
    - (i) selecting the number of commission or council members the new city should have; and
    - (ii) drawing district boundaries for the election of commission or council members, if the voters decide to elect commission or council members by district;
  - (g) be accompanied by and circulated with an accurate plat or map, prepared by a licensed surveyor, showing the boundaries of the proposed city; and
  - (h) substantially comply with and be circulated in the following form:

PETITION FOR INCORPORATION OF (insert the proposed name of the proposed city)

To the Honorable County Legislative Body of (insert the name of the county in which the proposed city is located) County, Utah:

We, the undersigned owners of real property within the area described in this petition, respectfully petition the county legislative body to submit to the registered voters residing within the area described in this petition, at a special election held for that purpose, the question of whether the area

should incorporate as a city. Each of the undersigned affirms that each has personally signed this petition and is an owner of real property within the described area, and that the current residence address of each is correctly written after the signer's name. The area proposed to be incorporated as a city is described as follows: (insert an accurate description of the area proposed to be incorporated).

- (3) A petition for incorporation under Subsection (1) may not be filed unless the results of the feasibility study or supplemental feasibility study show that the average annual amount under Subsection 10-2-106(4)(a)(ix) does not exceed the average annual amount under Subsection 10-2-106(4)(a)(viii) by more than 5%.
- (4) A signature on a request under Section 10-2-103 or a modified request under Section 10-2-107 may be used toward fulfilling the signature requirement of Subsection (2)(a):
  - (a) if the request under Section 10-2-103 or modified request under Section 10-2-107 notified the signer in conspicuous language that the signature, unless withdrawn, would also be used for purposes of a petition for incorporation under this section; and
  - (b) unless the signer files with the county clerk a written withdrawal of the signature before the petition under this section is filed with the clerk.

**10-2-110. Processing of petition by county clerk -- Certification or rejection -- Processing priority.**

- (1) Within 45 days of the filing of a petition under Section 10-2-109, the county clerk shall:
  - (a) with the assistance of other county officers from whom the clerk requests assistance, determine whether the petition meets the requirements of Section 10-2-109; and
  - (b)
    - (i) if the clerk determines that the petition meets those requirements, certify the petition, deliver it to the county legislative body, and notify in writing the contact sponsor of the certification; or
    - (ii) if the clerk determines that the petition fails to meet any of those requirements, reject the petition and notify the contact sponsor in writing of the rejection and the reasons for the rejection.
- (2)
  - (a) If the county clerk rejects a petition under Subsection (1)(b)(ii), the petition may be modified to correct the deficiencies for which it was rejected and then refiled with the county clerk.
  - (b) A modified petition under Subsection (2)(a) may be filed at any time until 30 days after the county clerk notifies the contact sponsor under Subsection (1)(b)(ii), even though the modified petition is filed after the expiration of the deadline provided in

Subsection 10-2-109(1).

- (c) A signature on an incorporation petition under Section 10-2-109 may be used toward fulfilling the signature requirement of Subsection 10-2-109(2)(a) for the petition as modified under Subsection (2)(a).
- (3) (a) Within 20 days of the county clerk's receipt of a modified petition under Subsection (2)(a), the county clerk shall follow the same procedure for the modified petition as provided under Subsection (1) for an original petition.
- (b) If a county clerk rejects a modified petition under Subsection (1)(b)(ii), no further modification of that petition may be filed.

**10-2-111. Incorporation election.**

- (1) At the next special election date under Section 20A-1-204 more than 45 days after the county legislative body's receipt of the certified petition or certified modified petition under Subsection 10-2-110(1)(b)(i), the county legislative body shall hold an election on the proposed incorporation.
- (2) (a) The county clerk shall publish notice of the election in a newspaper of general circulation within the area proposed to be incorporated at least once a week for three successive weeks.
- (b) The notice required by Subsection (2)(a) shall contain:
  - (i) a statement of the contents of the petition;
  - (ii) a description of the area proposed to be incorporated as a city;
  - (iii) a statement of the date and time of the election and the location of polling places; and
  - (iv) the feasibility study summary under Subsection 10-2-106(3)(b) and a statement that a full copy of the study is available for inspection and copying at the office of the county clerk.
- (c) The last publication of notice required under Subsection (2)(a) shall occur at least one day but no more than seven days before the election.
- (d) (i) If there is no newspaper of general circulation within the proposed city, the county clerk shall post at least one notice of the election per 1,000 population in conspicuous places within the proposed city that are most likely to give notice of the election to the voters of the proposed city.
- (ii) The clerk shall post the notices under Subsection (2)(d)(i) at least seven days before the election under Subsection (1).

**10-2-112. Ballot used at the incorporation election.**

- (1) The ballot at the incorporation election under Subsection 10-2-111(1) shall pose the

incorporation question substantially as follows:

Shall the area described as (insert a description of the proposed city) be incorporated as the city of (insert the proposed name of the proposed city)?

- (2) The ballot shall provide a space for the voter to answer yes or no to the question in Subsection (1).
- (3) (a) The ballot at the incorporation election shall also pose the question relating to the form of government substantially as follows:

If the above incorporation proposal passes, under what form of municipal government shall (insert the name of the proposed city) operate? Vote for one:

  - Five-member City Council form
  - Six-member City Council form
  - Council-Mayor form
  - Council-Manager form.
- (b) The ballot shall provide a space for the voter to vote for one form of government.
- (4) (a) The ballot at the incorporation election shall also pose the question of whether to elect city council members by district substantially as follows:

If the above incorporation proposal passes, shall members of the city council of (insert the name of the proposed city) be elected by district?
- (b) The ballot shall provide a space for the voter to answer yes or no to the question in Subsection (4)(a).

**10-2-113. Notification to lieutenant governor of incorporation election results.**

Within ten days of the canvass of the incorporation election, the county clerk shall send written notice to the lieutenant governor of:

- (1) the results of the election; and
- (2) if the incorporation measure passes:
  - (a) the name of the city; and
  - (b) the class of the city as provided under Section 10-2-301.

**10-2-114. Determination of number of council members -- Determination of election districts -- Hearings and notice.**

- (1) If the incorporation proposal passes, the petition sponsors shall, within 25 days of the canvass of the election under Section 10-2-111:
  - (a) if the voters at the incorporation election choose either the council-mayor or the council-manager form of government, determine the number of council members that will constitute the council of the future city;

- (b) if the voters at the incorporation election vote to elect council members by district, determine the number of council members to be elected by district and draw the boundaries of those districts, which shall be substantially equal in population;
  - (c) determine the initial terms of the mayor and members of the city council so that:
    - (i) the mayor and approximately half the members of the city council are elected to serve an initial term, of no less than one year, that allows their successors to serve a full four-year term that coincides with the schedule established in Subsection 10-3-205(1); and
    - (ii) the remaining members of the city council are elected to serve an initial term, of no less than one year, that allows their successors to serve a full four-year term that coincides with the schedule established in Subsection 10-3-205(2); and
  - (d) submit in writing to the county legislative body the results of the sponsors' determinations under Subsections (1)(a), (b), and (c).
- (2) (a) Before making a determination under Subsection (1)(a), (b), or (c), the petition sponsors shall hold a public hearing within the future city on the applicable issues under Subsections (1)(a), (b), and (c).
- (b) (i) The petition sponsors shall publish notice of the public hearing under Subsection (2)(a) in a newspaper of general circulation within the future city at least once a week for two successive weeks before the hearing.
  - (ii) The last publication of notice under Subsection (2)(b)(i) shall be at least three days before the public hearing under Subsection (2)(a).
- (c) (i) If there is no newspaper of general circulation within the future city, the petition sponsors shall post at least one notice of the hearing per 1,000 population in conspicuous places within the future city that are most likely to give notice of the hearing to the residents of the future city.
- (ii) The petition sponsors shall post the notices under Subsection (2)(c)(i) at least seven days before the hearing under Subsection (2)(a).

**10-2-115. Notice of number of commission or council members to be elected and of district boundaries -- Declaration of candidacy for city office.**

- (1) (a) Within 20 days of the county legislative body's receipt of the information under Subsection 10-2-114(1)(d), the county clerk shall publish in a newspaper of general circulation within the future city a notice containing:
- (i) the number of commission or council members to be elected for the new city;
  - (ii) if some or all of the commission or council members are to be elected by district, a description of the boundaries of those districts as designated by the

- petition sponsors under Subsection 10-2-114(1)(b);
  - (iii) information about the deadline for filing a declaration of candidacy for those seeking to become candidates for mayor or city commission or council; and
  - (iv) information about the length of the initial term of each of the city officers, as determined by the petition sponsors under Subsection 10-2-114(1)(c).
- (b) The notice under Subsection (1)(a) shall be published at least once a week for two successive weeks.
- (c) (i) If there is no newspaper of general circulation within the future city, the county clerk shall post at least one notice per 1,000 population in conspicuous places within the future city that are most likely to give notice to the residents of the future city.
- (ii) The notice under Subsection (1)(c)(i) shall contain the information required under Subsection (1)(a).
- (iii) The petition sponsors shall post the notices under Subsection (1)(c)(i) at least seven days before the deadline for filing a declaration of candidacy under Subsection (2).
- (2) Notwithstanding Subsection 20A-9-203(2)(a), each person seeking to become a candidate for mayor or city commission or council of a city incorporating under this part shall, within 45 days of the incorporation election under Section 10-2-111, file a declaration of candidacy with the clerk of the county in which the future city is located.

**10-2-116. Election of officers of new city.**

- (1) For the election of city officers, the county legislative body shall:
- (a) unless a primary election is prohibited by Subsection 20A-9-404(2), hold a primary election; and
  - (b) hold a final election.
- (2) Each election under Subsection (1) shall be:
- (a) appropriate to the form of government chosen by the voters at the incorporation election;
  - (b) consistent with the voters' decision about whether to elect commission or council members by district and, if applicable, consistent with the boundaries of those districts as determined by the petition sponsors; and
  - (c) consistent with the sponsors' determination of the number of commission or council members to be elected and the length of their initial term.
- (3) (a) Subject to Subsection (3)(b) and except as provided in Subsection (5), the primary election under Subsection (1)(a) shall be held at the earliest of the next:
- (i) regular general election under Section 20A-1-201;

- (ii) municipal primary election under Section 20A-9-404;
  - (iii) municipal general election under Section 20A-1-202; or
  - (iv) special election under Section 20A-1-204.
- (b) Notwithstanding Subsection (3)(a), the primary election under Subsection (1)(a) may not be held until 75 days after the incorporation election under Section 10-2-111.
- (4) Except as provided in Subsection (5), the final election under Subsection (1)(b) shall be held at the next special election date under Section 20A-1-204:
  - (a) after the primary election; or
  - (b) if there is no primary election, more than 75 days after the incorporation election under Section 10-2-111.
- (5) Notwithstanding Subsections (3) and (4), the county legislative body may hold the primary and final elections required under Subsection (1) on the dates provided for the next municipal primary election under Section 20A-9-404 and the next municipal general election under Section 20A-1-202, respectively, after the incorporation election, if:
  - (a) with the results under Subsection 10-2-114(1)(d), the petition sponsors submit to the county legislative body a written request to that effect; and
  - (b) the incorporation election under Section 10-2-111 took place in February or May of an odd-numbered year.
- (6) (a) (i) The county clerk shall publish notice of an election under this section at least once a week for two successive weeks in a newspaper of general circulation within the future city.
  - (ii) The later notice under Subsection (6)(a)(i) shall be at least one day but no more than seven days before the election.
- (b) (i) If there is no newspaper of general circulation within the future city, the county clerk shall post at least one notice of the election per 1,000 population in conspicuous places within the future city that are most likely to give notice of the election to the voters.
  - (ii) The county clerk shall post the notices under Subsection (6)(b)(i) at least seven days before each election under Subsection (1).
- (7) Until the city is incorporated, the county clerk is the election officer for all purposes in an election of officers of the city approved at an incorporation election.

**10-2-117. Notification to lieutenant governor of election of city officers.**

Within ten days of the canvass of the final election of city officers under Section 10-2-116, the county clerk shall send written notice to the lieutenant governor of the name and position of each officer elected and the term for which each has been elected.

**10-2-118. Elections governed by the Election Code.**

Except as otherwise provided in this part, each election under this part shall be governed by the provisions of Title 20A, Election Code.

**10-2-119. Filing of articles of incorporation with lieutenant governor.**

- (1) Within seven days after the canvass of the final election of city officers under Section 10-2-116, the mayor-elect of the new city shall file at least three copies of the articles of incorporation with the lieutenant governor.
- (2) The articles of incorporation shall:
  - (a) contain the name of the city;
  - (b) contain an accurate map or plat, prepared by a licensed surveyor, approved by the legislative body, and filed with the county surveyor in accordance with Section 17-23-17, showing the boundaries of the city;
  - (c) contain the city's class according to population as defined in Section 10-2-301; and
  - (d) be signed and verified by the mayor-elect of the city.
- (3) The legislative body of the new city shall comply with the notice requirements of Section 10-1-116.

**10-2-120. Alternative to filing articles of incorporation -- Powers of officers-elect.**

- (1)
  - (a) Before filing articles of incorporation, the mayor-elect of the future city may file with the lieutenant governor a verified notice of intention to file the articles of incorporation.
  - (b) The notice under Subsection (1)(a) shall contain:
    - (i) the name of the future city;
    - (ii) an accurate map or plat, prepared by a licensed surveyor, approved by the legislative body, and filed with the county surveyor in accordance with Section 17-23-17, showing the boundaries of the future city;
    - (iii) the city's class according to population as defined in Section 10-2-301; and
    - (iv) the proposed date for filing the articles of incorporation.
- (2) Upon the lieutenant governor's certification of the notice under Section 67-1a-6.5 and until the future city becomes legally incorporated, the officers of the future city may:
  - (a) prepare and adopt, under Chapter 6, Uniform Fiscal Procedures Act For Utah Cities, a proposed budget and compilation of ordinances;
  - (b) negotiate and make personnel contracts and hirings;
  - (c) negotiate and make service contracts;
  - (d) file the notification required by Subsection 10-1-116(1);
  - (e) negotiate and make contracts to purchase equipment, materials, and supplies;

- (f) borrow funds from the county in which the future city is located under Subsection 10-2-121(3);
  - (g) borrow funds for startup expenses of the future municipality; and
  - (h) issue tax anticipation notes in the name of the future municipality.
- (3) The city's legislative body shall review and ratify each contract made by the officers-elect under Subsection (2) within 30 days of the effective date of incorporation under Section 10-2-122.

**10-2-121. Division of municipal-type services revenues -- County may provide startup funds -- Filing of plat or map -- Notice requirements.**

- (1) The county in which an area incorporating under this part is located shall, until the date of the city's incorporation under Section 10-2-122, continue:
- (a) to levy and collect ad valorem property tax and other revenues from or pertaining to the future city; and
  - (b) except as otherwise agreed by the county and the officers-elect of the city after the filing of the notice under Subsection 10-2-120(1), to provide the same services to the future city as the county provided before the commencement of the incorporation proceedings.
- (2) (a) The legislative body of the county in which a newly incorporated city is located shall share pro rata with the new city, based on the date of incorporation, the taxes and service charges or fees levied and collected by the county under Section 17-34-3 during the year of the new city's incorporation if and to the extent that the new city provides, by itself or by contract, the same services for which the county levied and collected the taxes and service charges or fees.
- (b) (i) The legislative body of a county in which a city incorporated after January 1, 2004, is located may share with the new city taxes and service charges or fees that were levied and collected by the county under Section 17-34-3:
    - (A) before the year of the new city's incorporation;
    - (B) from the previously unincorporated area that, because of the city's incorporation, is located within the boundaries of the newly incorporated city; and
    - (C) for the purpose of providing services to the area that before the new city's incorporation was unincorporated.
  - (ii) A county legislative body may share taxes and service charges or fees under Subsection (2)(b)(i) by a direct appropriation of funds or by a credit or offset against amounts due under a contract for municipal-type services provided by the county to the new city.

- (3) (a) The legislative body of a county in which an area incorporating under this part is located may appropriate county funds to:
  - (i) before incorporation but after a notice under Subsection 10-2-120(1) is filed, the officers-elect of the future city to pay startup expenses of the future city; or
  - (ii) after incorporation, the new city.
- (b) Funds appropriated under Subsection (3)(a) may be distributed in the form of a grant, a loan, or as an advance against future distributions under Subsection (2).
- (4) (a) Within 30 days of incorporation, the legislative body of the new city shall record with the recorder of the county in which the new city is located a plat or map, prepared by a licensed surveyor and approved by the legislative body of the new city, the county recorder, and county surveyor, showing the boundaries of the new city.
- (b) The legislative body of the new city shall comply with the notice requirements of Section 10-1-116.

**10-2-122. When incorporation complete -- Incorporation presumed conclusive.**

- (1) A city is incorporated upon the lieutenant governor's certification of the city's articles of incorporation under Subsection 10-2-119(3)(a).
- (2) Notwithstanding any other provision of law, a city shall be conclusively presumed to be lawfully incorporated and existing if for two years following the city's incorporation:
  - (a) (i) the city has levied and collected a property tax; or
  - (ii) for a city incorporated on or after July 1, 1998, the city has imposed a sales and use tax; and
  - (b) no challenge to the existence or incorporation of the city has been filed in the district court for the county in which the city is located.

**10-2-123. Costs of incorporation.**

- (1) Subject to Subsection (2), all costs of the incorporation proceeding, including request certification, feasibility study, petition certification, publication of notices, public hearings, and elections, shall be paid by the county in which the proposed city is located.
- (2) If incorporation occurs, the new municipality shall reimburse the county for the costs of the notices and hearing under Section 10-2-114, the notices and elections under Section 10-2-116, and all other incorporation activities occurring after the elections under Section 10-2-116.

**10-2-124. Incorporation petitions before May 5, 1997.**

- (1) Except as provided in Subsections (2) and (3), a petition for incorporation filed before and still pending on May 5, 1997, that fails to comply with Section 10-2-109 is invalid.
- (2) Notwithstanding Subsection (1), a petition for incorporation filed before and still pending on May 5, 1997, that complies with Subsections 10-2-103(2)(a) through (d) and that is accompanied by and circulated with an accurate plat or map showing the boundaries of the proposed city shall be considered a valid request for a feasibility study under Section 10-2-103 and shall be processed in accordance with the provisions of this part.
- (3) Notwithstanding Subsection (1), the signatures on a petition that is invalid because of Subsection (1) may be used toward fulfilling the signature requirement of a request for a feasibility study under Subsection 10-2-103(2)(a).

**10-2-125. Incorporation of a town.**

- (1) As used in this section:
  - (a) "Base petition" means a petition under this section proposing the incorporation of a town and signed by the owners of private real property that:
    - (i) is located within the area proposed to be incorporated;
    - (ii) covers at least a majority of the total private land area within the area proposed to be incorporated; and
    - (iii) is equal in value to at least 1/3 but not more than 1/2 of the value of all private real property within the area proposed to be incorporated.
  - (b) "Qualifying petition" means a petition under this section proposing the incorporation of a town and signed by the owners of private real property that:
    - (i) is located within the area proposed to be incorporated;
    - (ii) covers at least a majority of the total private land area within the area proposed to be incorporated; and
    - (iii) is equal in value to more than 1/2 of the value of all private real property within the area proposed to be incorporated.
- (2) (a) A contiguous area of a county not within a municipality, with a population of at least 100 but less than 1,000, may incorporate as a town as provided in this section.
  - (b) (i) The population figure under Subsection (2)(a) shall be derived from the most recent official census or census estimate of the United States Bureau of the Census.
  - (ii) If the population figure is not available from the United States Bureau of the Census, the population figure shall be derived from the estimate from the Utah Population Estimates Committee.
- (3) (a) The process to incorporate an area as a town is initiated by filing a petition with the

clerk of the county in which the area is located.

- (b) Each petition under Subsection (3)(a) shall:
- (i) be signed by the owners of private real property that:
    - (A) is located within the area proposed to be incorporated;
    - (B) covers a majority of the total private land area within the area; and
    - (C) is equal in value to at least 1/3 of the value of all private real property within the area;
  - (ii) state the legal description of the boundaries of the area proposed to be incorporated as a town;
  - (iii) designate up to five signers of the petition as sponsors, one of whom shall be designated as the contact sponsor, with the mailing address of each owner signing as a sponsor;
  - (iv) be accompanied by and circulated with an accurate map or plat, prepared by a licensed surveyor, showing the boundaries of the proposed town; and
  - (v) substantially comply with and be circulated in the following form:

PETITION FOR INCORPORATION OF (insert the proposed name of the proposed town)

To the Honorable County Legislative Body of (insert the name of the county in which the proposed town is located) County, Utah:

We, the undersigned owners of real property within the area described in this petition, respectfully petition the county legislative body for the area described in this petition to be incorporated as a town. Each of the undersigned affirms that each has personally signed this petition and is an owner of real property within the described area, and that the current residence address of each is correctly written after the signer's name.

The area proposed to be incorporated as a town is described as follows: (insert an accurate description of the area proposed to be incorporated).
- (c) A petition under this section may not describe an area that includes some or all of an area proposed for annexation in an annexation petition under Section 10-2-403 that:
- (i) was filed before the filing of the petition; and
  - (ii) is still pending on the date the petition is filed.
- (4) Section 10-2-104 applies to a petition for incorporation as a town in any county, except that the notice under Subsection 10-2-104(1) shall be sent within seven calendar days after the filing of a petition under Subsection (3).
- (5) (a) (i) The legislative body of each county with which a base petition is filed under

this section shall commission and pay for a feasibility study as provided in Section 10-2-103.

- (ii) If the results of the feasibility study under Subsection (5)(a)(i) meet the requirements of Subsection 10-2-109(3), the county legislative body shall grant the petition.
  - (iii) If the results of the feasibility study under Subsection (5)(a)(i) do not meet the requirements of Subsection 10-2-109(3), the county legislative body may:
    - (A) deny the petition;
    - (B) grant the petition; or
    - (C) with the consent of the petition sponsors, grant the petition, after:
      - (I) imposing conditions to mitigate the fiscal inequities identified in the feasibility study; or
      - (II) altering the boundaries of the area proposed to be incorporated as a town to approximate the boundaries necessary to meet the requirements of Subsection 10-2-109(3).
  - (iv) Each town that incorporates pursuant to a petition granted after the county legislative body imposes conditions under Subsection (5)(a)(iii)(C)(I) shall comply with those conditions.
- (b) The legislative body of each county of the second, third, fourth, fifth, or sixth class with which a qualifying petition is filed shall grant the petition.
- (6) (a) Upon the granting of a petition filed under this section, the legislative body of the county in which the proposed town is located shall appoint a mayor and members of the town council from a list of qualified individuals approved by the petition sponsors.
- (b) The officers appointed under Subsection (6)(a) shall hold office until the next regular municipal election and until their successors are elected and qualified.
- (7) Each newly incorporated town shall operate under the six-member council form of government as described in Section 10-3-101.
- (8) (a) Each mayor appointed under Subsection (6) shall, within seven days of appointment, file articles of incorporation of the new town with the lieutenant governor.
- (b) The articles of incorporation shall meet the requirements of Subsection 10-2-119(2).
- (9) A town is incorporated upon the lieutenant governor's issuance of a certificate of entity creation under Section 67-1a-6.5.
- (10) The legislative body of the new town shall comply with the notice requirements of Section 10-1-116.

